No. 15826.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

CECIL M. JACKSON, Bankrupt,

Appellant,

vs.

A. S. MENICK, Trustee in Bankruptcy of Cecil M. Jackson,

Appellee.

APPELLANT'S CLOSING BRIEF.

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Statement of the Case.

Cecil M. Jackson, bankrupt, has taken an appeal from an Order granting a Petition for Review setting aside the Referee's Order and determining that bankrupt does not have a valid claim of Homestead exemption. The question on Appeal is whether a Declaration of Homestead which was executed and recorded by the bankrupt and his wife contains an adequate description by reference to a previously recorded document.

ARGUMENT.

I.

Review of Cases Cited by the Appellee.

In examining the rather rambling review of the cases set forth in appellee's brief, it should be noted there is no case cited in said brief which requires that the description in a Homestead be more precise than in a Deed. Many facets of the law of Homestead are reviewed in the Appellee's Brief covering the other requirements as laid down in Section 1263 of the Civil Code of California, none of which are pertinent to the question involved here, to wit, whether the reference in the Declaration of Homestead recorded by Mr. and Mrs. Jackson to a previously recorded document was adequate to supply the missing description.

The Appellant herein does not contend that any formal requirement as set forth in California Civil Code, Section 1263, be eliminated. The Appellant does contend that the legal description of the Homestead need be no more specific than in a Deed.

Ornbaum v. Creditors, 61 Cal. 455.

That the description necessary in a Deed can be supplied by reference to another document previously recorded is elementary law in California.

Marcone v. Dowell, 178 Cal. 396.

Appellee cites the case of *Lynch, Trustee v. Stotler,* 215 F. 2d 776, for the proposition that the requirements of the California Homestead statute must be performed before a Homestead can validly exist. The Appellant has no argument with this rule of law. However, the de-

scription in the Homestead Declaration can be ascertained not only from a full legal description being set forth on the Homestead Declaration but by reference to a previously recorded document.

As was pointed out in the case of *Oktanski v. Burn,* 138 Cal. 2d 419:

> "It is true that a valid homestead description should contain a reasonably correct description, but it is not true that absolute perfection is required."

II.

The Reference to the Previously Recorded Document Was a Sufficient Reference to Supply the Missing Description.

The Appellee now argues on one hand that the former Declaration of Homestead could have referred to property anywhere, including San Diego County, and on the other hand argues that a Declaration of Homestead is a means of furnishing the creditor body with certain information in recorded form open to the world. If that is true, then anyone searching the Los Angeles Recorder's Office, after finding no description in the Declaration of Homestead under question, but a reference to "the former Declaration of Homestead was abandoned on or about March 12, 1954," certainly should be bound to check the records of the Los Angeles County Recorder's Office further rather than idly speculate on whether the property subject to the former Homestead was in Los Angeles County or in some other county, such as San Diego County. A further examination of the records of Los Angeles County for the date referred to, March 12, 1954, would indicate the great similarities between the dcoument's reference to the property. Both documents referred to property in the

City of Los Angeles, County of Los Angeles, State of California. Both show the same parties signing the document were living on the property and that the property sought to be homesteaded consisted of a six-room residence and garage. Such similarity should certainly be notice to any creditor. Upon checking the property the creditor would find that the same parties mentioned in both documents were occupying it.

The argument made by the Appellee is much the same argument which was overruled in the case of *Joyce v. Thomasini.* The Court there ruled that it would not be presumed for the purpose of nullifying a contract to sell land that there was another tract of land of the specified acreage either in such county or elsewhere that is bound by other lands belonging to the same persons as named. The court stated that if such coincidence exists it was incumbent on the defendant to plead and prove it.

No evidence was introduced at the hearing in the bankruptcy court before the Referee, nor has it been contended at any point in the proceeding that the bankrupt ever had a Homestead on any other property other than that thought to be Homestead or owned at any time any other property he could or did Homestead.

Appellant's Opening Brief, page 8, referred to the case of the *Matter of the Estate of Caroline Ogburn,* 105 Cal. 95, where the Court, in determining whether a description was sufficient, decided that because the Declaration contained a statement that the family resided upon the lot sought to be Homesteaded, that this statement along with such description as was present in the Declaration was adequate to meet the requirements of the Homestead Statute.

The Appellee takes the position that the bankrupt in this case has merely recorded a document saying in effect, "I want a homestead." However, in blandly summarizing the efforts of the bankrupt in this respect, Appellant respectfully submits the Appellee has disregarded what has seemed to be the test laid down by the California courts in interpreting the California Homestead Statute, Civil Code, Section 1263. It would appear that the decisions reached in such cases as the *Matter of the Estate of Caroline Ogburn,* 105 Cal. 95; *Donnelly v. Tregakis,* 154 Cal. 261; *Oktanski v. Burn,* 138 Cal. App. 2d 419, or the case of a Deed, *Marcone v. Dowell,* 178 Cal. 396, the Court has asked the question, "can this description be made certain?" It appears in these cases that if there is some external evidence referred to in the document itself which will make the description certain, then the Courts will uphold the validity of the document. In the present instance, in addition to the fact that the bankrupt is living on the property (Notice to his Creditors) the reference to the previously recorded Abandonment of Homestead certainly should complete the need for certainty.

III.

Did Any Creditors Rely on the Lack of a Classical Legal Description in the Homestead Declaration?

The Appellee admits in his reply brief that many California cases refer to the Homestead Statutes as "a remedial measure to be liberally construed."

Schuyler v. Broughton, 76 Cal. 524.

To carry out this manifest purpose of the legislature would not seem, in any way to be detrimental to the creditors unless they proved that they had truly relied on the Homestead Declaration in question being void. Thus,

it would not seem to be a question of whether we are considering the code section as interpreted by the California courts to be a harsh or unfair interpretation. We must only consider whether, under the circumstances as outlined in these briefs and giving liberal construction to said code section, there has been such a compliance with it as interpreted by all the California cases on the subject as to create a valid homestead. It is respectfully submitted that even without applying a liberal interpretation of the cases, this court might well find that there has been full compliance with the Homestead statute. In light of such a decision as the case of *Oktanski v. Burn,* 138 Cal. App. 2d 419, an application of the liberal construction of this statute, Civil Code, Section 1263, would seem to eliminate any existing doubt as to the sufficiency of the Homestead Declaration in question.

Applying such liberal construction to the present facts, it would seem to result in notice to the bankrupt's creditors who might have searched the Los Angeles records and found the bankrupt's claim to a Homestead which referred to the previously recorded abandonment. Certainly, if these creditors had notice of such a claim by the bankrupt, then, the liberal interpretation is a logical one and fair to both debtor and creditor. The statute, under such circumstances, has carried out the manifest purpose of the legislature.

Respectfully submitted,

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